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**IN THE
COURT OF APPEALS OF INDIANA**

RICKY L. ANGEL, JR.,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 90A05-0712-CR-660

APPEAL FROM THE WELLS CIRCUIT COURT
The Honorable David L. Hanselman, Sr., Judge
Cause Nos. 90C01-0609-FD-0095 and 90C01-0508-FD-0079

October 3, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Ricky L. Angel, Jr. (“Angel”) was found guilty in Wells Circuit Court of Class D felony dealing in marijuana under Cause Number 90C01-0609-95 (“Cause 95”) and his probation was revoked under Cause Number 90C01-0508-FD-79 (“Cause 79”). The trial court sentenced Angel to one and one half years under Cause 95 and revoked probation and ordered Angel to serve three years under Cause 79. Angel appeals and argues that the sentence under Cause 95 was inappropriate and that the trial court abused its discretion in ordering Angel to serve the full sentence under Cause 79.

We affirm.

Facts and Procedural History

On August 12, 2005, Angel pleaded guilty to Class D felony dealing in marijuana under Cause 79. He was sentenced to three years suspended with two years probation. On September 15, 2006, police obtained a search warrant for Angel’s apartment after learning that Angel had sold marijuana to juveniles. Police found more than a pound of marijuana.

On September 18, 2006, the State charged Angel with Class D felony dealing in marijuana, Class D felony possession of marijuana, Class D felony possession of a controlled substance, and Class D felony maintaining a common nuisance under Cause 95. As a result of his charged under Cause 95, the State filed a petition to revoke Angel’s probation under Cause 79. The State also filed a petition to revoke probation under Cause 79 alleging a failed drug test and use of marijuana.

On March 21, 2006, Angel pleaded guilty to Class D felony dealing in marijuana under Cause 95 and admitted to the violations contained in the petitions to revoke

probation under Cause 79. On October 30, 2007, the trial court sentenced Angel to one and one half years under Cause 95. Additionally, the trial court revoked Angel's probation under Cause 79 and ordered him to serve the previously suspended three-year sentence. Angel appeals.

I. Appropriateness of Sentence

Angel argues that his sentence in Cause 95 was inappropriate. Appellate courts have the constitutional authority to revise a sentence if, after consideration of the trial court's decision, the court concludes the sentence is inappropriate in light of the nature of the offense and character of the offender. Ind. Appellate Rule 7(B) (2008); Marshall v. State, 832 N.E.2d 615, 624 (Ind. Ct. App. 2005), trans. denied. “[A] defendant must persuade the appellate court that his or her sentence has met the inappropriateness standard of review.” Anglemyer v. State, 868 N.E.2d 482, 494 (Ind. 2007). Additionally, “[s]entencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of discretion.” Id. at 490.

Angel is essentially asking that we reweigh the aggravating and mitigating factors. This argument has been rejected by our Supreme Court in Anglemyer v. State, 868 N.E.2d 482, 491 (Ind. 2007) (“Because the trial court no longer has any obligation to ‘weigh’ aggravating and mitigating factors against each other when imposing a sentence, unlike the pre-Blakely statutory regime, a trial court can not now be said to have abused its discretion in failing to ‘properly weigh’ such factors.”).

Additionally, the sentence is not inappropriate in light of the nature of the offense and character of the offender. Angel was on probation at the time he committed the new

crime. In fact, he decided to commit the very same crime again. Accordingly, we conclude that Angel's sentence is not inappropriate based on the nature of the offense and the character of the offender.

II. Probation Revocation

The sentencing of a defendant following a probation violation is governed by statute.

If the court finds that the person has violated a condition at any time before termination of the period, and the petition to revoke is filed within the probationary period, the court may:

- (1) continue the person on probation, with or without modifying or enlarging the conditions;
- (2) extend the person's probationary period for not more than one (1) year beyond the original probationary period; or
- (3) order execution of all or part of the sentence that was suspended at the time of initial sentencing.

Ind. Code § 35-38-2-3(g) (2004 & Supp. 2005)

“Once a trial court has exercised its grace by ordering probation rather than incarceration, the judge should have considerable leeway in deciding how to proceed.” Prewitt v. State, 878 N.E.2d 184, 188 (Ind. 2007). A trial court's sentencing decision following a probation revocation is reviewed for abuse of discretion. Sanders v. State, 825 N.E.2d 952, 956 (Ind. Ct. App. 2005), trans. denied. An abuse of discretion will be found “where the decision is clearly against the logic and effect of the facts and circumstances.” Prewitt, 878 N.E.2d at 188. We will consider the evidence most favorable to the trial court's decision and will not reweigh the evidence or judge witnesses' credibility. Sanders, 825 N.E.2d at 945-55.

After his first conviction and being shown the grace of probation and a second chance, Angel again committed the same offense for which he was placed on probation. Also, he used marijuana and failed a drug test. We therefore conclude that the trial court acted within its discretion in ordering Angel to execute the suspended portion of his sentence. Angel's argument is essentially a request that we reweigh the evidence, which we will not do.

Conclusion

Angel's sentence was not inappropriate in light of the nature of the offense and character of the offender. Also, the trial court did not abuse its discretion in ordering Angel to execute the previously suspended portion of his sentence.

Affirmed.

BAKER, C.J., and BROWN, J., concur.